in the history of Michigan." In view of Mr. Lightner's long service on the State Board of Law Examiners and as chairman of the State Bar Association's Grievance Committee and as chairman of the Grievance Committee of the Detroit Bar Association, which has given him a special insight into the broader social and professional aspects of the question involved, his views, as summarized in his brief, are of peculiar interest. He says:

"For my part, I prefer the practice and the opinion of the profession in New York State. Especially in the First Appellate Department, which includes the city of New York, they have impressions regarding fitness and decency.

"The practice of the law perhaps some fifteen years ago became so vicious in New York that the bar awoke to the necessity of some reasonable regulation thereof, and the judges of the Appellate Division, First Department, have, as I read the reports of that court, given first attention to disbarment matters. The line of decisions of that court furnish the best set of traditions, if I may so call it, that is to be found in any jurisdiction in this country. In answer to an inquiry of the Bar Association of the City of New York, and especially of the attorney for its Grievance Committee, I am advised that (while that court has never expressly decided whether, in case of a disbarred lawyer, the court still had jurisdiction to reinstate him upon showing of character, etc.) that court has never reinstated a lawyer who was disbarred from practice in the State of New York, although there have been many cases wherein that relief has been sought, except for one reason, and that was because the issue was raised (and found in favor of the petitioner) that the order of disbarment was procured by fraud. In no other of the many cases of petition for reinstatement (in case of disbarment) has the Appellate Division in New York reinstated a lawyer for any reasons subsequent to the order of disbarment." E. R. S.

CONSTITUTIONAL VALIDITY OF THE KANSAS INDUSTRIAL COURT ACT.—The great importance of the objects sought to be attained by the Kansas Industrial Court Act, and the widespread interest it has occasioned, would seem to justify a discussion of its constitutional validity, in advance of any final determination of the question. Mr. Alexander Howat hoped to test the constitutionality of the act by appealing two cases, in one of which he was sentenced to imprisonment for refusing to appear as a witness before the Industrial Court, and in the other of which he with others was sentenced to imprisonment for one year for violating an injunction forbidding the calling of a threatened strike. In the decision of these combined cases, Nos. 154 and 491 in the October term of the United States Supreme Court, rendered March 13, 1922, the constitutional questions were not decided. The Supreme Court held that the invalidity of parts of the act, assuming that parts of it were invalid, would not justify refusal to answer to a subpoena or disobedience of an injunction, and refused to consider the constitutionality of the law, since the question was not directly before the court.

The purpose of the Kansas act is to preserve the public peace, public health, proper living conditions and general welfare of the people, by preventing the interruption of essential industries by violent strikes and labor controversies. The enterprises named are declared to be affected with a public interest, and include (1) the manufacture and preparation of food products, (2) the manufacture of clothing and all manner of wearing apparel, (3) the mining or production of any substance in common use as fuel, (4) the transportation of food, fuel, and clothing from the place of production or manufacture to the place of consumption, (5) all public utilities and common carriers as they had been defined under the Public Utilities Commission Act of Kansas. The Industrial Court consists of three judges. It has the power of summoning witnesses and requiring the production of books and papers in its investigations. It may of its own motion investigate conditions in the industries named, when it believes industrial strife is threatened or the continuity of production of the necessaries of life endangered. It is duty bound to investigate, upon the complaint of one of the parties to a controversy, or upon the complaint of ten citizen taxpayers, or of the attorney general. The court may serve its findings in the form of an order on the parties interested; the order fixing wages, determining the hours and conditions of employment. When necessary the court may apply to the constitutional courts of the state to compel obedience to its orders, and parties affected are given recourse to the courts to obtain review as to the reasonableness of the orders of the Industrial Court. The act expressly preserves to every individual the right to choose his own employment and make reasonable contracts and agreements, but declares that it is unlawful for two or more persons to conspire together to cripple the industries governed. The violation of the orders by an individual is made a misdemeanor, and violation by one in a position of authority whereby groups of persons are made to violate the orders is made a felony. For a thorough review of the effectiveness of the law, see COURT OF INDUSTRIAL RELATIONS IN KANSAS, 19 MICH. L. REV. 675.

There are several possible attacks on the constitutionality of the law. 1. It does not provide for the separation of the judicial and legislative powers of the state. 2. It is an improper delegation of legislative power. 3. Since it makes violation of the orders of the Industrial Court a crime, in calling upon a court to enforce its orders it may require equity to enjoin a crime and deprive the defendant of a trial by jury. 4. It is an improper exercise of the police power of the state, and thus deprives persons of their liberty and property without due process of law.

The problem of preserving a proper separation of powers in such police measures is left to the states unless the state tribunal exercises judicial powers in such a way as to deprive persons of their liberty and property without due process under the Fourteenth Amendment. See WILLOUGHBY, CONSTITUTION, p. 1260. It is not likely the Kansas Industrial Court Act would be held unconstitutional on this ground. The act provides for notice to interested parties by registered mail, or by publication, as to the time and place of hearing, and it provides for the subpoena of witnesses. And,

furthermore, the Industrial Court is not given authority to enforce its own orders, so that, as remarked by Chief Justice Taft, it is more properly termed a "board," and is miscalled a "court." Administrative boards are not held to the degree of procedural requirements that courts are expected to preserve. It is to be noted that the procedure of the Kansas Industrial Court is very similar to that of the Interstate Commerce Commission. Although not necessary to its decisions, the Kansas supreme court has already declared that the law is not objectionable as combining the legislative and judicial powers. *State ex rel.* v. *Howat,* 109 Kan. 376; *State ex rel.* v. *Howat,* 107 Kan. 423. And the states freely allow administrative boards to exercise quasi-judicial powers. See 6 R. C. L. 179. If the Industrial Court were actually a court, it would not, however, be permitted to act in an administrative capacity. WILLOUGHBY, CONSTITUTION, *supra.* However, it is seen that when the Industrial Court, as an administrative board, applies to a court to secure the enforcement of its orders the Industrial Court and the parties whose compliance it seeks to secure furnish antagonistic parties. There is then an actual dispute upon which the court can act as a court within the limitations prescribed by *Muskrat* v. *United States,* 219 U. S. 346; see also *Anway* v. *Grand Rapids Ry. Co.,* 211 Mich. 592, involving the Michigan Declaratory Judgments statute. It is not likely that any state court would refuse jurisdiction to a petition presented by such a board as the Kansas Industrial Court. It was held that a petition by the Interstate Commerce Commission to require production of evidence did present a case or controversy over which the court had jurisdiction. *Interstate Commerce Commission* v. *Brimson,* 154 U. S. 447. See also *United States* v. *Duell,* 172 U. S. 576.

The question whether the Industrial Court is not improperly given the discretionary power reposed in the legislature by the people, and which cannot be redelegated without authority from the people, is also a question of state constitutional law. The Industrial Court does determine questions of policy. It investigates conditions in an industry, decides what is a fair return on capital, what will afford a living wage, what working conditions should be maintained for the good health of workmen, and it issues orders in accordance with its adjudications on these questions. But the legislature has acted in a general way, when it has named the industries which it believed so clothed with a public interest as to require this special supervision. There is good ground for the conclusion that the Industrial Court in exercising the functions intrusted to it is acting as an administrative body, determining the special matters necessary for an intelligent application of the legislative will. Where this can be held to be the case, the tendency at the present time, in view of the complexity of modern business life which makes it impossible for a legislature to decide all matters in advance, is to uphold such delegations of power. Some state courts, however, might refuse to allow some of the powers left to the Industrial Court. See DELEGATION OF LEGISLATIVE POWER, 20 MICH. L. REV. 652.

It is true that violation of the orders of the Industrial Court is made a crime by the legislature, and in this single aspect if a court of equity is

called upon to prevent the violation of these orders it would seem to be acting to prevent a crime without according a jury trial to the prospective criminal. But where there are other grounds for equity jurisdiction its action cannot be objected to merely because the act enjoined for separate and valid grounds happens at the same time to be a crime. POMEROY, EQUITY JURISPRUDENCE (Ed. 2), §§ 891-895; *State* v. *Vaughan,* 81 Ark. 117. As pointed out in *State* v. *Howat,* 109 Kan. 376, the primary purpose of an injunction to enforce the orders of the Industrial Court is to prevent industrial strife with the consequent injury to state property perhaps from strike violence, to protect the public peace and safety, and to prevent the public from being deprived of the source of its food, fuel or clothing supply. The power to prevent a strike by recourse to equity has been likened to the power to abate a public nuisance, or the power to abate a perpresture. *Mugler* v. *Kansas,* 123 U. S. 623; see also *In re Debs, Petitioner,* 158 U. S. 564. Any threatened violation of an order of the commission which would endanger large public rights could clearly be prevented by injunction, although minor provisions of the orders the violation of which could not be shown to have such serious results could not be enforced in this way. The possibility that an injunction could not be used in some cases, however, it is clear would not affect the constitutional validity of the act nor prevent its enforcement by indirect means through punishment for its violation.

It has been advanced that the Kansas Industrial Court Act represents an unjustifiable exercise of the police power of the state and deprives persons of their property and liberty to contract without due process of law. It is said that Kansas has embarked upon a policy of paternalism, since the police power has ordinarily been confined to regulation of the manner in which property clothed with a public interest may be used. The police purpose, in this act, it is said, has changed from prohibition to mandatory injunction, since it is criminal for an industry to cease operation after its investigation and regulation. "The Fundamental Unsoundness of the Kansas Industrial Court Law," 7 AM. BAR ASSN. JOURN. 333. But the prohibition from ceasing business operations is in terms only to prevent the use of this means as a coercive measure in hindering the work of the Industrial Court, and seems a reasonable provision. It is said that to justify the exercise of the police power to regulate prices or the rates for service the business affected must be engaged in supplying things necessary to the public welfare, and must be so monopolistic in its nature that competition cannot be trusted to protect the public welfare. See 19 MICH. L. REV. 74 and 599. The Kansas Industrial Court Act merely approaches the matter from another point of view. The industries affected were regarded by the legislature as furnishing the necessaries of life, and they were so large, not necessarily as to make price or rate regulation necessary because of monopoly, but so large that the bargaining or contracting power between employer and employee was unequal, and industrial controversies were likely to result in forcible means of settlement of the dispute, to the great public detriment, through the interruption of the public peace, and cessation from the production of necessities. It seems that the doctrine of *Munn* v. *Illinois,* 94 U. S. 113,

might well be applied to such a case. The doctrine has been repeatedly confirmed. Its theory has been held to justify the regulation of rates of insurance, although an insurance company deals in personal contracts of indemnity instead of the manufacture, transportation, or sale of commodities. *German Alliance Insurance Company* v. *Supt. of Ins. of Kansas,* 233 U. S. 389. It would seem equally justifiable for the state to provide for the fixing of the terms of contract between the employer and the employee, when the object is to prevent the tying up of essential industries to the detriment of the people of a state. Other cases tending to support the use of the police power for this purpose are reviewed in "Police Power and the Kansas Industrial Court," 7 AM. BAR ASSN. JOURN. 415. The opinion of Justice Burch in *State* v. *Howat,* 109 Kan. 376, vividly portrays the real dangers sought to be met by the act. The fact that the general provisions of the act are to be executed in detail by a commission, called a court, rather than all prescribed in advance by the legislature, insures thoroughness and accuracy in their application. The fact that they are executed by such a commission rather than in all cases left to the more ponderous action of the courts insures swiftness and efficiency in emergencies. A critical examination of the law induces the belief that it is not only salutary but also constitutionally sound. C. E. B.

CONSTITUTIONAL LAW—REMOVAL TO FEDERAL COURTS BY FOREIGN CORPORATIONS.—The legal status of the foreign corporation under the federal Constitution has been shrouded in such uncertainty and perplexity during the past two decades that each pronouncement of the Supreme Court which tends to clarify the difficulty is more than welcome. In view of this situation the recent decision in the case of *Terral* v. *Burke Construction Company,* (1922), 42 Sup. Ct. 188, is particularly gratifying. The Burke Construction Company, a corporation organized under the laws of Missouri, had been licensed to do business in Arkansas. While engaged in business in the latter state it had removed a suit to the federal courts on the ground of diversity of citizenship. A statute of Arkansas provided, as a condition of doing business in the state, that the foreign corporation should not remove suits to the federal courts without the consent of the other party to the controversy, and that it should be the duty of the Secretary of State to revoke the license of any corporation which should violate this condition. Acting under this statute, Terral, the Secretary of State, was about to revoke the license. The company sought an injunction to prevent the revocation, contending that the statute was unconstitutional. The Supreme Court by a unanimous decision upheld the plaintiff's contention, saying, "A state may not, in imposing conditions upon the privilege of a foreign corporation's doing business in the state, exact from it a waiver of its constitutional right to resort to the federal courts, or thereafter withdraw the privilege of doing business because of the exercise of such right, whether waived in advance or not. (This principle) rests upon the ground that the federal Constitution con-